IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22573 of 2005
With
CIVIL APPLICATION No. 266 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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NIRUBEN ASHOKBHAI PARMAR - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NR KODEKAR for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 31/01/2006

ORAL JUDGMENT

1.Niruben Ashokbhai Parmar, petitioner-detenu has filed

this habeas corpus petition under Article 226 and 227 of the Constitution of India challenging the order of detention dated 9/10/2005 passed by the District Magistrate, Bhavnagar under the provisions of PASA Act. Petition was filed on 18/11/2005. On 22/11/2005, the matter was placed for hearing and on that day this Court has issued rule which was returnable on 19/12/2005. On behalf of respondent, Mr.L.R.Pujari, learned APP appears.

2.Mr.Anil S.Dave, learned senior counsel who appears on behalf of the petitioner also originally argued the matter and thereafter the the learned counsel has presented amendment and this Court has passed an order on 12/1/2006 allowing the amendment and thereafter time was given to the learned APP to file additional affidavit. Therefore, with consent of parties, matter has been placed for hearing and final disposal to this Court today.

3.Mr.Dave, learned counsel has invited my attention to the order of detention dated 9/10/2005 by which the petitioner has been detained under the provisions of PASA Act. The leaned counsel has also invited my

attention to the order of committal dated 9/10/2005 passed by the District Magistrate, Bhavnagar by which the petitioner-detenu has been sent to Vadodara jail on the same day. He has also invited my attention to the grounds furnished by the detaining authority to the petitioner-detenu on 9/10/2005 in this behalf. The learned counsel has stated that in the grounds, it has been alleged that there are seventeen offences registered against the petitioner-detenu under the provisions of Prohibition Act. It was also alleged that petitioner is carrying business of making country liquor. All the offences are committed within the jurisdiction of 'B' Division Police Station, Bhavnagar. Offences committed by the petitioner-detenu are as under:

1. Offence registered as Criminal Case No.148 of 2004 dated 14/2/2004 under the provisions of Section 66(B) and 65(E) of the Prohibition Act. It is alleged that petitioner-detenu was storing 60 liters of arrack (raw material of country liquor) and 20 liters of country liquor valued at Rs.580/-.

2. Offence registered as Criminal Case No.657 of 2004

dated 12/7/2004 under the provisions of Section 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 500 liters of arrack (raw material of country liquor) valued at Rs.1,500/-.

3. Offence registered as Criminal Case No.673 of 2004 dated 18/7/2004 under the provisions of Section 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 600 liters of arrack (raw material of country liquor) valued at Rs.1,800/-.

4. Offence registered as Criminal Case No.42 of 2005 dated 19/1/2005 under the provisions of Section 66(B), 66(C), 66(D), 66(E), 66(F) and 81 of the Prohibition Act. It is alleged that petitioner-detenu was storing 600 liters of arrack (raw material of country liquor), 10 liters of country liquor and tools for the same valued at Rs.2845/-.

5. Offence registered as Criminal Case No.247 of 2005 dated 26/3/2005 under the provisions of Section 66(B), 65(E) and 81 of the Prohibition Act. It is alleged that petitioner-detenu was storing 45 liters of country liquor and one scooter valued at Rs.10,900/-.

6. Offence registered as Criminal Case No.250 of 2005 dated 26/3/2005 under the provisions of Section 66(B) and 65(B), 65(C), 65(D), 65(E), 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 150 liters of arrack (raw material of country liquor), 20 liters of country liquor and tools for the same valued at Rs.1,830/-.

7. Offence registered as Criminal Case No.366 of 2005 dated 16/5/2005 under the provisions of Section 66(B) and 65(E) of the Prohibition Act. It is alleged that petitioner-detenu was storing 56 liters of country liquor valued at Rs.1,120/-.

8. Offence registered as Criminal Case No.471 of 2005 dated 8/6/2005 under the provisions of Section 66(B), 65(E) and 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 400 liters of arrack (raw material of country liquor) and 40 liters of country liquor valued at Rs.2,100/-.

9. Offence registered as Criminal Case No.483 of 2005 dated 10/6/2005 under the provisions of Section 66(B),

65(E) and 81 of the Prohibition Act. It is alleged that petitioner-detenu was storing 25 liters of country liquor valued at Rs.500/-.

10. Offence registered as Criminal Case No.496 of 2005 dated 12/6/2005 under the provisions of Section 66(B) and 65(E) of the Prohibition Act. It is alleged that petitioner-detenu was storing 20 liters of country liquor and one scooter valued at Rs.20,400/-.

11. Offence registered as Criminal Case No.635 of 2005 dated 12/7/2005 under the provisions of Section 66(B) and 65(E) and 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 125 liters of country liquor and 1200 liters of arrack (raw material of country liquor) valued at Rs.5,500/-.

12. Offence registered as Criminal Case No.691 of 2005 dated 22/7/2005 under the provisions of Section 66(B), 65(E) and 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 32 liters of country liters and 500 liters of arrack (raw material of country liquor) valued at Rs.2,175/-.

13. Offence registered as Criminal Case No.740 of 2005 dated 29/7/2005 under the provisions of Section 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 400 liters of arrack (raw material of country liquor) valued at Rs.1,200/-.

14. Offence registered as Criminal Case No.761 of 2005 dated 2/8/2005 under the provisions of Section 66(B), 65(E) and 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 15 liters of country liquor and 200 liters of arrack (raw material of country liquor) valued at Rs.920/-.

15. Offence registered as Criminal Case No.825 of 2005 dated 16/8/2005 under the provisions of Section 66(B), 65(E) and 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 5 liters of country liquor and 200 liters of arrack valued at Rs.700/-.

16. Offence registered as Criminal Case No.841 of 2005 dated 19/8/2005 under the provisions of Section 66(B), 65(E), 65(F) and 81 of the Prohibition Act. It is alleged that petitioner-detenu was storing 30 liters of country liquor and 600 liters of arrack (raw material of

country liquor) valued at Rs.2,800/-.

17. Offence registered as Criminal Case No.932 of 2005 dated 11/9/2005 under the provisions of Section 66(B), 65(E) and 65(F) of the Prohibition Act. It is alleged that petitioner-detenu was storing 5 liters of country liquor and 300 liters of arrack (raw material of country liquor) valued at Rs.1,000/-.

4. The authority has also stated that in all seventeen case, the petitioner-detenu has been released on bail. 12 cases are pending before the Court and rest of the cases are pending before the Police Commissioner.

5. It has been also alleged that petitioner-detenu is carrying business of illegal, illicit country made liquor and therefore it affects the public health in this behalf. He is manufacturing country liquor, selling, transporting and storing the same and in all criminal cases, he has been released on bail and therefore it is not possible to deal with the Trial Court and therefore, the authority has passed an order of detention under Section 2 of Section 3 of PASA Act. It was also stated that it will be open for the

petitioner-detenu to make representation in this behalf.

6. The learned counsel for the petitioner-detenu has invited my attention to the representation dated 18/10/2005 as well as further representation dated 31/10/2005 in this behalf.

7. Though there are seventeen offences which has been alleged against the petitioner-detenu wherein it is alleged that, petitioner-detenu is 'bootlegger' within the meaning of PASA Act, the learned counsel for the petitioner-detenu has submitted that the authority has passed the order of detention on the basis of the fact that petitioner-detenu is manufacturing liquor and he has storing raw material for the manufacturing of country liquor and he is also transporting and selling the liquor in this behalf. The learned counsel has also submitted that storing of arrack (raw material of country liquor) would would not become activities prejudicial to the maintenance of public order because the same can be dealt with under the provisions of ordinary prohibition Act and if raw material, arrack of country liquor sold by the detenu, his activities does not affect the public health. Therefore, that arrack

i.e. raw material of country liquor is dealt with by the detenu and country liquor which is dangerous to the public health, such materials exceeds either in the form of report of chemical examiner or FSL. The copy of the same would require also to put to make effective representation.

8. The learned counsel for the petitioner has stated that report of FSL must show that country liquor which has been manufactured out of arrack is dangerous to the public health then and then the authority can arrived at the subjective satisfaction in this behalf. He has also invited my attention to the FSL report which is at page 9 in which it has been stated that there is presence of Eithile Alcohol but other ingredients are absent. The report of FSL is that the product which has been examined by FSL cannot be used as country liquor. It is good for drinking purpose in this behalf. The leaned counsel therefore, submitted that the FSL report must state that not only present of Eithile, other material to show that illicit liquor is not injurious to health.

9. He has invited my attention to the FSL Report and also page 45 and 87. In fact subsequent FSL report only

shows that there is presence of Eithile but there is no report which shows that the said country liquor is injurious to the health. The learned counsel therefore submitted that mere activities of carrying on business of illicit liquor and storing of arrack will not become violation of public health or public order, at the most violation of law and order situation.

10.I have considered all the rival submissions and relevant materials in this behalf. However, in my view, the contention of Mr.Anil Dave, learned advocate is acceptable that mere strength and number of incidents are not sufficient to prove that the activities of the detenu of manufacturing, storing, transporting and selling illicit liquor is prejudicial to public order.

11.In support of the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 Sc 491 and recent judgment of the Hon'ble Supreme Court in the case of District Collector Ananthapur and another v. V.Laxmanna, reported in 2005 (3) SCC 663 wherein in para 7, the Hon'ble Supreme Court has observed that:

> “We do not think that this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale or arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

12.On the other hand, Mr.L.R.Pujari, learned APP has stated that if there are seventeen cases of prohibition,

then this Court can come to the conclusion that the activities of the detenu is prejudicial to the maintenance of public order therefore, the detention order must uphold. He has also relied upon affidavit filed by the authority. In the affidavit, it has been stated that contention raised by the petitioner has been taken by the respondent in this behalf. The authority has considered all the grounds.

13.There is no scope for the Court because the authority has produced enough material and there are instruments which has been seized which are used for manufacturing liquor.

14.Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crime. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the

backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality.

15.In view of the recent judgment of the Hon'ble Apex Court in the case of District Collector v. V.Laxmanna (supra), which the learned advocate for the petitioner cited and relied upon, in my view, detention order on the ground that detenu is indulging in manufacturing or transporting or selling of arrack-country liquor then that by itself would not become an activity prejudicial to the maintenance of public order but action under ordinary law namely prohibition law or other can be initiated. In view of the judgment of the Hon'ble Apex Court, the authority must alleged that the country liquor sold by the detenu is injurious to the public health and further that carrying on such activity is prejudicial to the maintenance of public order. The authority must show FSL report or report of chemical examiner which shows that the country liquor which has been manufactured is injurious to health and prejudicial to the public health and copy of such material should

also be given to the detenu to afford him to make an effective representation.

16.As the authority has failed and neglect to produce such material, in my view, the detention order is liable to be quashed and set aside only on that ground.

17.In the result, petition is allowed. I hereby quash and set aside the order of detention dated 9/10/2005 passed by the District Magistrate, Bhavnagar. Niruben Ashokbhai Parmar, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

18.In view of the order passed in the main matter, no orders are passed on the Civil Application. Hence, Civil Application No.266 of 2006 is disposed of accordingly.

(K.M.MEHTA, J.)

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